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WILLIAM J. HOFFMAN, Receiver

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 WILLIAM J. HOFFMAN, Court-
appointed permanent receiver for
16 Nationwide Automated Systems, Inc.,
Oasis Studio Rentals, LLC, Oasis Studio
17 Rentals #2, LLC, and Oasis Studio
Rentals #3, LLC, and their subsidiaries
18 and affiliates,

19 Plaintiff,

20 v.

21 JUTTA RICHERT, an individual and
DOES 1 THROUGH 10, inclusive,

22 Defendant.
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Case No. 2:16-cv-2929

COMPLAINT FOR FRAUDULENT
TRANSFER

1 Plaintiff William J. Hoffman of Trigild, Inc. ("Receiver"), the Court-
2 appointed permanent receiver for Nationwide Automated Systems, Inc. ("NASI"),
3 Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio
4 Rentals #3, LLC, and their subsidiaries and affiliates ("Receivership Entities"),
5 hereby brings the following Complaint against the above-captioned defendant, Jutta
6 Richert ("Defendant"), and alleges, on behalf of the Receivership Entities, as
7 follows:

8 I. JURISDICTION AND VENUE

9 1. This Court has jurisdiction over this matter under 28 U.S.C.
10 sections 1345 and 1367(a), and the doctrines of ancillary and supplemental
11 jurisdiction, in that this action arises from a common nucleus of operative facts as,
12 and is substantially related to the original claims in, the Securities and Exchange
13 Commission ("Commission") enforcement action styled as *Securities and Exchange*
14 *Commission v. National Automated Systems, Inc., et al.*, United States District
15 Court, Central District of California, Case No. 14-CV-07249-SJO (FFMx) ("SEC
16 Action").

17 2. This Court may exercise personal jurisdiction over the above-captioned
18 Defendant pursuant to Federal Rule of Civil Procedure 4(k)(1)(A); and 28 U.S.C.
19 §§ 754 and 1692.

20 3. Venue in the Central District of California is proper under 28 U.S.C.
21 section 1391 because this action is an ancillary proceeding to the SEC Action and
22 because the Receiver was appointed in this District pursuant to the Preliminary
23 Injunction and Orders (1) Freezing Assets; (2) Prohibiting the Destruction of
24 Documents; (3) Requiring Accountings; and (4) Appointing a Receiver entered by
25 this Court in the SEC Action on October 29, 2014 ("Preliminary Injunction").

26 II. PARTIES

27 4. The Receiver is the duly appointed permanent receiver for the
28 Receivership Entities, and was appointed permanent receiver for the Receivership

1 Entities pursuant to the Preliminary Injunction. Among other things, the
2 Preliminary Injunction calls for the Receiver to recover and marshal, for the benefit
3 of creditors of and investors in the Receivership Entities, any and all assets which
4 were owned, leased, occupied, or otherwise controlled by the Receivership Entities
5 or were otherwise purchased with assets of the Receivership Entities. The Receiver
6 holds exclusive authority and control over the assets of the Receivership Entities,
7 including over the causes of action alleged herein, over which this Court has
8 ancillary and supplemental jurisdiction.

9 5. On information and belief, Jutta Richert, is a citizen and resident of the
10 County of Marin, California, and is the recipient of assets of the Receivership
11 Entities as described further herein.

12 6. The Receiver is ignorant of the true names and capacities, whether
13 individual, corporate, associate or otherwise, of Does 1 through 10. The Receiver is
14 informed and believes, and based thereon alleges, that each fictitiously named
15 defendant is the recipient of fraudulently transferred funds from the Receivership
16 Entities, or was in some way responsible for, participated in or contributed to the
17 matters and things of which the Receiver complains herein, and in some fashion, has
18 legal responsibility therefor. When the exact nature and identity of such fictitious
19 defendant's responsibility for, participation in and contribution to the matters and
20 things herein alleged is ascertained, the Receiver will seek to amend this Complaint
21 and all proceedings herein to set forth the nature of these defendant's identity.

22 7. The Receiver is informed and believes, and based thereon alleges, that
23 Does 1 through 10, are principals, officers and/or agents of the Defendant, and
24 directed, ratified, or caused the conduct and/or omissions alleged in this Complaint.
25 The Receiver is further informed, and on that basis alleges, that Does 1 through 10
26 are the alter egos of the Defendant, and as such are liable for the conduct and
27 damages alleged against the Defendant herein.

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1 8. The Receiver is informed and believes, and based thereon alleges, that
2 the Defendant is, and at all times relevant herein was, the agent, principal, partner,
3 co-conspirator and/or co-venturer of Does 1 through 10, that each of them acted
4 within the course, scope and authority of said relationships, and that, as a result, are
5 jointly and severally liable for the acts alleged herein.

6 III. FACTUAL ALLEGATIONS

7 A. The Purported Business of the Receivership Entities and the 8 Commencement of the SEC Action

9 9. As alleged by the Commission in the SEC Action, NASI raised money
10 from investors by selling them Automated Teller Machines ("ATMs"), leasing the
11 ATMs back from investors, managing the ATMs for the investors, and paying the
12 investors "rents" that were guaranteed to total at least 20% of the purchase price
13 paid for the ATMs per year. The Receivership entities also paid referral fees to
14 investors and other agents who recruited new investors to purchase ATMs.

15 10. In actuality, the Receivership Entities did not sell any ATMs to
16 investors, but instead fabricated and sold fictitious ATMs with fabricated serial
17 numbers and locations. The "rents" paid to investors who purchased fictitious
18 ATMs, as well as referral fees paid to investors and agents, were paid from the
19 amounts raised from other investors. Thus, NASI operated a classic Ponzi scheme.

20 11. On or about September 17, 2014, the Commission initiated the SEC
21 Action against the Receivership Entities and their principals Joel Gillis and Edward
22 Wishner, alleging violations of federal securities laws. The Commission petitioned
23 for the Receiver's appointment, and on September 30, 2014, and October 29, 2014,
24 this Court entered orders appointing the Receiver, first on a temporary basis and
25 then as permanent receiver for the Receivership Entities.

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1 **B. The Receiver's Authority and Investigation Pursuant to His**
2 **Appointment**

3 12. Pursuant to the terms of his appointment, the Receiver is vested with
4 exclusive authority and control over the assets of the Receivership Entities.
5 Specifically, Article XII of the Preliminary Injunction and Article VIII of the Freeze
6 Order vests the Receiver with the "full powers of an equity receiver, including, but
7 not limited to . . . full power to sue . . . and take into possession all [receivership]
8 property."

9 13. The Receiver's investigation to date supports and confirms the
10 Commissions allegations in the SEC Action, including that NASI operated a Ponzi
11 scheme, sold fictitious ATMs to investors and made rent and referral fee payments
12 to investors from funds raised from other investors. Defendants Gillis and Wishner
13 filed answers to the SEC's complaint in which they admit the facts supporting the
14 SEC's Ponzi scheme allegations.

15 **C. Criminal Indictment and Guilty Pleas**

16 14. On December 16, 2014, Gillis and Wishner were arrested and charged
17 with mail fraud, wire fraud, conspiracy, and aiding and abetting. *United States v.*
18 *Gillis, et al.*, C.D. Cal. Case No. 14-CR-00712-SJO. Gillis and Wishner waived
19 indictment, surrendered their passports, and were released on bail. On January 13,
20 2015, and January 21, 2015, respectively, Wishner and Gillis plead guilty to all four
21 counts of the criminal information. In connection with Gillis' guilty plea, a
22 statement of facts signed by Gillis that supports the guilty plea was filed by the
23 government ("Statement of Facts"). As part of his guilty plea, Gillis stated under
24 oath that the facts in the Statement of Facts were true. The Statement of Facts is
25 attached hereto as Exhibit A.

26 15. The Statement of Facts is fully incorporated herein by reference. The
27 facts stated therein are included in this complaint as though fully restated and
28 alleged herein.

D. The Fraudulent Transfers to Defendant From the Receivership Entities

16. Upon the Receiver's appointment, the Receiver promptly moved to secure control over NASI's offices, assets, and operations, including its electronic and physical records and data. Altogether, these records included 92 boxes of documents and electronic images containing a total of over 56,000 documents. Despite the large volume of records obtained, there was no way for the Receiver to identify profiting investors without expending considerable time to reconstruct financial receipts and disbursements for the Receivership Entities going back more than 15 years from the date of his appointment. The Receiver's investigation into the assets and financial affairs of the Receivership Entities was further complicated because the Receivership Entities did not keep traditional accounting systems or software, balance sheets, profit and loss statements or other financial statements, bank statements or other banking records for their accounts, or a traditional database of investor accounts. Accordingly, at the outset of his appointment and for lengthy period of time thereafter, the Receiver had no way to know of specific payments received from individual investors or payments made to individual investors as purported profits, including payments received from or made to Defendants by NASI.

17. As reliable information about NASI's financial transactions was not available, the Receiver and his staff had to devote considerable time and diligently reconstructed the company's ledger of transactions. This required the Receiver and his staff to manually source information from years of bank statements and cleared checks in order to create a schedule of checks paid by NASI to investors. On average, over 2,000 checks were paid by NASI to investors on a monthly basis in 2014. A significant amount of time was also spent by the Receiver and his staff to reconstruct banking transactions from 2005, 2006 and 2007, as financial institutions no longer kept these records since they are only required to maintain account

1 records going back seven years. Reconstruction of these years of payments to
 2 investors was not completed until the second quarter of 2015, and it was not until
 3 the fourth quarter of 2015 that the Receiver was able to complete the reconstruction
 4 of both payments received from and made to Defendant such that a determination
 5 could be made as to whether Defendant received profits in excess of their initial
 6 deposits.

7 18. Specifically, including payments to and from Defendant going back to
 8 1999, it was not until December 16, 2015 that the Receiver discovered that the
 9 Defendant had received profits over and above her initial deposits. Once
 10 discovered, the Receiver promptly made a demand on Defendant for disgorgement
 11 in a letter dated December 17, 2015. The Defendant did not accept the Court-
 12 approved settlement offer in the letter and the Receiver then promptly filed this
 13 action.

14 19. Attached hereto as Exhibit B is a schedule of bank transfers from
 15 Defendant to NASI and from NASI to Defendant. As the schedule reflects, the net
 16 amount received by Defendant ("Profit Amount") is calculated by subtracting
 17 (a) transfers from NASI to Defendant ("Payments from NASI") from (b) transfers
 18 from Defendant to NASI ("Deposit Amount"). Defendant's Profit Amount is
 19 \$122,430.00.¹

20 20. Defendant had no business dealing with NASI apart from transactions
 21 relating to the purchase and leasing of fictitious ATMs and provided no services or
 22 other value to NASI other than amounts paid for the fictitious ATMs.

23 **COUNT I – FRAUDULENT TRANSFER**

24 21. The Receiver incorporates herein each and every allegation contained
 25 in Paragraphs 1 through 20, inclusive, hereinabove set forth.

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 27 ¹ All transfers of Payments from NASI occurring (a) after Defendant received
 28 payments equal to the Deposit Amount, and (b) more than seven years prior to
 the date of filing this Complaint have been excluded from the calculation of the
 Profit Amount.

22. Over the course of its pre-receivership operations, NASI paid the Profit Amount to Defendant with the intent to hinder, delay, or defraud NASI's creditors. Such payments were made from the proceeds of the Ponzi scheme which were generated from investors in the scheme.

23. The Receivership Entities received nothing of value in exchange for the payments that comprise the Profit Amount.

24. At the time the payments comprising the Profit Amount were made to Defendant, NASI was engaged in or about to engage in business transactions for which its remaining assets were unreasonably small in relation to the business or transaction.

25. NASI was insolvent, or became insolvent, shortly after the subject payments comprising the Profit Amount were made to Defendant.

26. NASI intended to incur, or believed or reasonably should have believed it would incur, debts beyond its ability to pay as they became due.

27. As a consequence, the full Profit Amount is an actual and constructively fraudulent transfer under California's Uniform Voidable Transactions Act, Cal. Civ. Code section 3439, *et seq.*, and is subject to immediate disgorgement to the Receiver.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against Defendant as follows:

(a) For a judgment against Defendant, avoiding the transfer from NASI to Defendant comprising the Profit Amount; and

(b) For an order deeming the Profit Amount paid to Defendant to be held in constructive trust for the benefit of the Receivership Entities; and

(c) For an order directing Defendant to immediately pay the Profit

1 (d) Amount, plus prejudgment interest and costs, to the Receiver; and

2 (e) For such other and further relief as the Court may deem proper.

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4 Dated: April 28, 2016

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7 By: /s/ Tim C. Hsu

8 TIM C. HSU
9 Attorneys for Receiver
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